F. M. S.

[APPELLATE CIVIL JURISDICTION]

THORNE, Ag. C.J.

February 17, 1933.

TERRELL, Ag. C.J., WHITLEY & GERAHTY, JJ.

June 10, 1933.

THE FEDERATED MALAY STATES Defendants-Appellants.

vs.

HARNAM KAUR ..... Plaintiff-Respondent.

[SELANGOR CIVIL APPEAL No. 5 of 1933]

Revenue—Estate Duty Enactment, 1929, sections 6, 14 and 17—Liability to estate duty of immoveable property held by a deceased person as trustee, when the trust is not evidenced by the documents of title—Property passing on the death of a deceased person.

When a person, though the registered proprietor of immoveable property, holds such property in trust for a syndicate and firm of which he is a member, but dies without such trust being evidenced as required by the second proviso to section 6 of the Estate Duty Enactment, 1929, the Collector of Estate Duty is entitled to treat the immoveable property of which he was the registered proprietor as though the deceased was the beneficial owner even though he was only a trustee.

Further, though a portion of the immoveable property was charged by the deceased to secure money for the syndicate, and the title deeds to the remainder of the immoveable property were deposited with a bank to secure an overdraft by the firm, the property which passed on the death of the deceased is the whole of the immoveable property, its principal value being estimated as provided for in section 14.

Finally, the only deduction is under section 17, in respect of that portion of the charge for which the deceased was personally liable. No deduction could arise in respect of the overdraft, unless the firm failed to pay the debt for which they were primarily liable, and left the bank to claim against the deceased's estate.

Decision of Thorne, Acting C.J. reversed.

B. J. P. Joaquim for the plaintiff—Respondent.

W. G. W. Hastings for the defendants—Appellants.

THORNE, AG. C.J.—This was an application under section 36 of the Estate Duty Enactment No. 10 of 1929, for the determination of certain questions arising out of the assessment of estate duty by the Collector of the value of the estate of one Gian Singh deceased.

The summons sets out three matters which are enumerated as A, B and C. Since the issue of the summons, the parties have agreed with regard to A, that the figure be fixed at $18,000. As to B, they agreed that the assessment be reduced to fifty per cent. of the figures there stated. By agreement, therefore, the figure mentioned in A will be $18,000 and that in B $12,030.99. The assessment will be amended accordingly, and by agreement, each party will pay its own costs of these two matters.

This leaves only C, which reads as follows:—

> "By deducting from the value of the landed properties the full amount of the liabilities directly attributable thereto."

The Collector's last assessment bears date the 18th November, 1932, and is marked as Exhibit H.S. 7. From this and its schedules the matter which now arises for debate does not appear in simple form, and I would therefore state the problem as follows.

At the time of his death on the 10th day of February, 1931, Gian Singh was registered as the proprietor of certain lands in the State of Selangor. These may be conveniently classed under two headings (1) the Princes Road property, and (2) the trust property. The Princes Road property was subject to a first charge in favour of the Planters Loan Board for the face value of $125,000. The title deeds of the trust property were hypothecated to the Chartered Bank to secure the amount due upon an overdraft of the firm of Gian Singh & Co. in which Gian Singh was a partner. At the time of the death of Gian Singh the amount of this overdraft was $59,985.37. The Collector has assessed the lands in both A and B at their full market value, making no allowance whatever for the charge in the one case and the overdraft in the other.

The plaintiff claims that in fact Gian Singh was not the beneficial owner of these lands for the full interest, that he was in fact only entitled to a share therein, but if, for the purposes of estate duty, the deceased is to be regarded as the true owner, the Collector should so consider him with regard to liabilities in respect of these lands or, in other words, if under the peculiar provisions of the Estate Duty Enactment, the deceased must be regarded as the owner of property of which in fact he was not the true owner, he must be so regarded for all purposes.

At the hearing before me, Mr. Hastings for the Collector conceded to the plaintiff that the deceased was in fact entitled to an interest to the extent of 18½ per cent. in this land, and that the plaintiff would be entitled to deduct from the gross assessed value on the land 18½ per cent. of any charges thereon. Mr. Joaquim for the plaintiff declined to accept this, and pressed for the deduction of the full amount.

Section 4 of the Enactment has been repealed, and a new section enacted as follows:—

> 4 (i). "In the case of every person dying after the last day of December 1931, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value, ascertained as hereinafter provided of all property which passes, on the death of such person a duty called 'estate duty' at the graduated rates set forth in the second schedule to this Enactment."

Section 5 of the Enactment reads as follows:—

> "Property passing on the death of the deceased shall be deemed to include the property following that is to say—
>
> (1) Property of which the deceased was at the time of his death competent to dispose;"

This section proceeds to define other classes of property which are deemed to pass on death.

Section 6 excludes property held by the deceased as a trustee for another person, provided that the facts fall within the purview of that section. But the second proviso to the section enacts that:—

> "For the purpose of this Enactment no property passing on the death of the deceased shall be deemed to be held by the deceased in trust for another person under any disposition unless the trust is evidenced in the case of immoveable property by registration as trustee and by the deposit of the instrument declaring or containing the trust in the office of the Registrar of Titles or Collector of Land Revenue."

This section restricts the evidence by which the fact of trusteeship may be established for the purposes of the Enactment, so that unless a registered holder is so registered as trustee, and the instrument which evidences the trust be deposited in terms of that section, the registered holder is treated as the true owner for the purpose of the Enactment.

The parties put in at the hearing before me a statement of admitted facts, exhibit 'A,' from which it will be seen that in fact the deceased had a share in these lands beneficially, but was a trustee of the remaining interest in the lands for other persons. Applying the proviso to section 6, a volume of this evidence becomes inadmissible. It seems to me that of exhibit A, paragraphs 3, 4, 5 and 6, 7 (c) (e) and paragraph 8 (c) (f) are inadmissible, and I reject them for the purposes of this application.

In the result the deceased must be regarded as the registered owner of land which at the time of his death was subject to either a charge or an hypothecation. The question is whether upon the true interpretation of the Enactment those lands are chargeable with duty at their gross value or at the nett value.

Sections 4 and 5 of the Enactment are borrowed from sections 1 and 2 of the Finance Act 1894. The principle on which the latter Act was founded is said to be that whenever property changes hands on death, the State is entitled to step in and take toll of the property as it passes. The word 'property' is defined by sub-section (xi) of section 2 of the Enactment.

The phrase 'passing on death' has been the subject of judicial comment, and would appear to mean a change of possession or enjoyment which occurs on the happening of death. Sections 1 and 2 of the Finance Act have been considered by the Courts in *Cowley* v. *The Inland Revenue Commissioners*, (1899) A.C. 198, at page 210, and in *Attorney General* v. *Dobree*, (1900), 1 Q.B. 442, at page 450.

The accepted view would appear to be that these two sections are mutually exclusive, although the first sub-section to our section 5 appears in terms to be sufficiently wide to cover the same cases as those which would fall within section 4. I refer to this as one of the provisions of the Enactment to which I have referred in my endeavour to ascertain the intention of the Legislature, in order to a proper interpretation. It would seem that the intention is to charge duty on all assets of which the deceased was the owner at his death, and not to charge assets of which he appeared to be the owner but of which he was in fact a trustee, and in which he had no beneficial interest—see sections 6 and 7 of the Enactment.

It is to be remembered that the property which is charged is that which passes at the time of death, and it seems therefore material to consider what belonged to the deceased at the time of his death.

With regard to the Princes Road property, these lands were subject to a first charge in favour of the Planters Loan Board, for the sum of $125,000. But in fact a sum of $11,037.53 had been paid to the Planters Loan Board at the time of the death.

It is argued for the Collector that at that time the deceased man was the registered owner of those lands, and that the property which passed on his death was the full registered interest in those lands. In this I am unable to agree. The deceased was the registered owner it is true, but by his own act he had carved out of the full registered interest a part of the whole interest in favour of the chargees by giving a charge to the Planters Loan Board, after which it seems to me that he was the registered owner, subject only to the rights of the chargee under part 10 of the Land Code, No. 34 of 1926.

If the contention of the Collector be correct, assume a case where the chargee is an individual, and that the chargor and the chargee died simultaneously. Then the State would be entitled to enforce payment of estate duty upon first the gross value of the land, and next the total value of the sum remaining due to the chargee; or in other words, a sum largely in excess of the gross value of the land. In my view, this is not so, and the interests of chargor and chargee when added together make up the total value of the asset. In other words, on the death of a chargor, the property which passes on his death to his legal personal representative is the nett value of the land, after deducting from the gross value the amount due on the charge.

Section 4 provides 'that estate duty shall be levied and 'paid upon the principal value ascertained as hereinafter provided.' Section 14 provides that the principal value shall be assumed to be the price which in the opinion of the Collector the property would fetch if sold in the open market at the time of the death of the deceased. If land subject to charge were offered for sale in the open market, can it be suggested that the buyer would pay a price equal to the gross value of the land, and disregard the fact that the land was subject to a first charge which he would be called upon to pay? It seems to me clear that the principal value to be ascertained in this way would result in the buyer paying a price equal to the difference between the amount due to the chargee for principal, interest and costs, and the

sum which he, the buyer, assumed to be the gross value of the property.

This construction of the section appears to me to be supported by the decision in *Cowley's case, (supra)*, where a tenant for life and a tenant in remainder having executed a disentailing deed, mortgaged the fee simple, and re-settled the equity of redemption. On the death of the tenant for life, all that passed was the equity of redemption.

I may however be wrong in my view with regard to the construction of the Enactment, and I therefore proceed to consider the argument of the Collector that the deduction to be made should be only 18½ per cent. of the total amount due on the charge.

This contention is based on section 17 of the Enactment, and it is urged that under sub-section (i) (a) the monies raised by charge of this land were not so raised wholly for the deceased's own use and benefit, or in the alternative, under sub-section (b) that the estate of the deceased will be entitled to reimbursement from some other person or persons. It seems to me that the Collector can only establish either of these two propositions by showing in fact that the deceased was a trustee of these lands. The proviso to section 6, however, in my view applies as well to the Collector as to the legal personal representative of the estate of the deceased for all the purposes of the Enactment, and the Collector is therefore barred from adducing evidence to establish this fact. I hold therefore that even if I am wrong in my construction of the Enactment, the Collector cannot claim to allow a proportion of the charge, but must allow the full amount which was properly due on the charge at the date of the death of the deceased.

In the result, therefore, a deduction must be made from the gross value of the Princes Road property of the sum of $113,962.47 being the balance due to the Planters Loan Board upon their charge at the date of death.

With regard to the trust property, the deceased had agreed in writing to execute a charge in favour of the Chartered Bank on demand to secure an overdraft to the extent of $70,000, and had deposited the grants of these lands with the bank. At the time of his death the deceased could not have recovered possession of these grants, or dealt honestly with the property unless he had first paid the amount due to the Chartered Bank. In my view this was sufficient to create an encumbrance on the land, and the value of the interest of the deceased therein was reduced by the amount due to the Chartered Bank. In my view therefore this case falls within precisely the same category as that of the Princes Road property, and a deduction must be made from the gross value of the land of the sum of $59,985.37 being the amount due to the bank at the date of death.

Equally in my view, the amounts due to the Sanitary Board for assessment and to the Government for quit rents, both of which are charges upon the land in respect of which they accrued, must also be allowed as deductions from the gross value, in arriving at the value of the property which passed on the death of Gian Singh. Further deductions must therefore be allowed in the case of Princes Road property, of $1,450.61 and $86, and in the case of the trust property $1,584.51 and $73.20.

Mr. Joaquim sought further to deduct from the value of the Princes Road property the sum of $11,037.53, being the amount paid by the deceased's firm Gian Singh & Co. to the Planters Loan Board on account of the amount due on their charge. This claim must fail. The amount was withdrawn by the deceased from his firm, and is an item which must be taken into account in assessing the value of the deceased's interest in that firm.

I hold, therefore, that the objection succeeds, and that the plaintiff on this summons should recover from the defendants her costs of these proceedings, so far as they relate to this one issue. I refer it to the Registrar to tax the plaintiff's costs of this issue only.

The defendants appealed. The appeal was heard on May 15, 16 and June 10, 1933.

W. G. W. Hastings for the appellants.

E. D. Shearn for the respondent.

Cur. Adv. Vult.

TERRELL, AG. C.J.—In this case the respondent is the administratrix of Gian Singh deceased, and issued the Originating Summons No. 1 of 1933 by way of appeal against the revised assessment of the Collector of Estate Duties, dated the 18th November, 1932. The value of Gian Singh's estate had been assessed at $390,920.59 made up as follows:—

Landed properties—			
Princes Road property	...	$186,850	
Trust Estate	...	125,344	
			312,194.00
Other assets	...		78,726.59
			$390,920.59

The estate duty at 7 per cent. was assessed at $27,364.44.

There is no dispute about the actual facts. The Princes Road properties though all registered in Gian Singh's name, were in fact held by him as a trustee for a syndicate in which he held 18½ per cent. The properties were subject to a registered charge in favour of the Planters Loan Board for $103,739.96.

The Trust Estate was also registered in Gian Singh's name. He held the properties in trust for the same persons who were partners in the

firm of Gian Singh & Co., and the deceased held a one-quarter share in such properties. The trust properties had originally been charged to secure an overdraft of the firm at the Chartered Bank, but at the date of the death there was no registered charge, and the bank held the title deeds by way of deposit only against the firm's overdraft which amounted to $59,985.37. In the Collector's assessment the estate, under the provisions of the second proviso of section 6 of the Estate Duty Enactment 1929, was charged with the full value of the Princes Road and Trust properties, and no deduction was allowed in respect of the charge in favour of the Planters Loan Board. The overdraft in favour of the Chartered Bank was not allowed as a deduction from the capital value of the Trust property, but was taken into consideration in assessing the value of the business of Gian Singh & Co.

The Originating Summons came on for hearing before Thorne, J., Acting Chief Justice, on the 9th February, 1932. Before the hearing certain adjustments were agreed to. A deduction of $2,000 was allowed in respect of the Trust Property, reducing the assessment to $123,344, and further deductions amounting to $12,031.00 were agreed in respect of certain doubtful assets. In the course of the hearing, counsel for the Collector also agreed to a deduction of 18½ per cent. upon the amount of the Planters Loan Board charge as representing the deceased's share and amounting to $19,192.90. As a result of these adjustments the Collector's assessment was reduced to $357,696.69, made up as follows:—

Princes Road property ..	$186,850.00
Trust property	123,344.00
Other assets, allowing for the deductions specified above	47,502.69
	$357,696.69

The duty at 7 per cent. would amount to about $25,000, plus accrued interest.

It cannot be disputed that the actual beneficial interest of Gian Singh, which passed on his death, was as follows:—

18½ per cent. of the Princes Road property	$ 34,567.25
25 per cent. of the Trust property	30,836.00
Other assets	47,502.69
	$112,905.94

Under the 1929 Enactment duty on estate of this size would be at 6 per cent., and would amount to $6,774-35.

At the hearing before Thorne, J. counsel for the administratrix could not resist the provisions of the second proviso of section 6 and admitted that the estate was assessable with the full value of the Princes Road and the Trust properties. It was, however, submitted that the full amount of the charge for $103,739-96 should be deducted from the value of the Princes Road property, and the amount of the bank overdraft from the value of the trust property, for the purpose of ascertaining the value of these properties passing on death. As regards the bank overdraft it was admitted that if it were dealt with in this way, the valuation of the business of Gain Singh would be increased accordingly, and the administratrix submitted to be charged with her share of such increased valuation (see exhibit H.S. 8).

The learned trial Judge accepted the contention of the administratrix, and against this decision the Collector has appealed. The short question before the Court of Appeal therefore was, whether the moneys charged against the Princes Road property and Trust property by way of registered charge and lien respectively should be deducted from those properties in ascertaining the value of the property that passed on death.

Before the hearing of the Originating Summons the solicitors on both sides signed a statement of admitted facts, from which most of the details referred to above have been taken, and these facts were treated as admitted during the hearing. In the course of his written judgment, however, the learned trial Judge came to the conclusion that certain of these facts were inadmissible as being inconsistent with the second proviso to section 6 of the Enactment, and rejected them for the purpose of the application.

The second proviso to section 6 reads as follows:—

> "And provided that for the purpose of this Enactment no property passing on the death of the deceased shall be deemed to be held by the deceased in trust for another person under any disposition unless the trust is evidenced in the case of immoveable property by registration as trustee and the deposit of the instrument declaring or containing the trust in the office of the Registrar of Titles or Collector of Land Revenue, and in the case of moveable property by a declaration of trust signed by the necessary parties. For the purpose of this section immoveable property includes charges on moveable property."

The effect of this proviso appears to me not to render inadmissible facts which have actually been admitted, but to make such facts irrelevant for the purpose of rebutting the presumption of beneficial ownership, which arises when no instrument of trust has been registered. For all other purposes the admitted facts are perfectly relevant, and it is noticeable that although the presumption of beneficial ownership arises in the case of a registered owner or chargee, it does not arise in the case of a chargor. I cannot follow the learned Judge's argument that the Collector in refusing to admit the trust in the case of properties registered in the deceased's name, precludes himself from alleging that the deceased had only a partial liability in respect of the

charges. In the first case, the Enactment has specially provided that for the purpose of taxation, the deceased shall be deemed to have been the owner of property of which he was not in fact the owner. As regards the charge, there is nothing in the Enactment to prevent effect being given to the true state of affairs upon which the parties are agreed.

Quite apart from the fact that the proviso in section 6 is silent so far as concerns a chargor, section 17 makes it abundantly clear that no deductions shall be made except in respect of debts which the deceased actually owed, and which he cannot recover by way of reimbursement from anyone else.

The only question, therefore, for consideration is, what was the property which passed on death? Was it the whole of the Princes Road property and the Trust property, or was it the residual value of such properties after deducting in the one case the amount of the charge and in the other the amount of the overdraft?

The answer to this question must be ascertained from the Enactment itself, and I do not think much assistance is derived from the argument that in the Federated Malay States land must be treated as a chattel, and that in England the pawnor of an article retains sufficient in the article to maintain an action of trover—*Franklin* v. *Neate*, (1844) 13 M. & W. 481; 153 E.R. 200.

The analogy of the Finance Acts in England is of course of some assistance, as section 4 of the Enactment, the charging section, corresponds to section 2 (i) of the Finance Act 1894, section 14 to section 7 (5), and section 17 to section 7 (1).

Estate duty is payable "on the principal value, ascertained as hereafter provided of all property which passes on the death."

There is no doubt that the Princes Road property passed on the death of Gian Singh. Section 14 provides how the principal value 'shall be ascertained.' It shall be "the estimated price which in the opinion of the Collector such property would fetch if sold in the open market at the time of the death of the deceased." The section does not say that any charges are to be taken into consideration, and only the residual value assessed, any more than section 7 (5) of the Finance Act provides for the estimated of the equity of redemption. What is to be valued is the property, and the meaning to my mind is clear enough especially as section 17 provides what allowances are to be made in respect of debts. It is noticeable that such allowances are to be made in respect of the estate, not in respect of the particular property. In the English section, allowance is made for the debts and incumbrances, whereas in the Enactment the word 'incumbrances' is omitted, but this is perfectly logical as 'incumbrance' has especially reference to a mortgage, and under the Land Code, there is no such thing as a mortgage, nor does the word 'incumbrance' occur. In the Federated Malay States a charge is properly described as a debt, and section 2 (xi) of the Estate Duty Enactment itself speaks of a 'debt secured on moveable or immoveable property.' So also in the case of *Haji Abdul Rahman* v. *Mohamed Hassan*, 1 F.M.S.L.R. 290, it is pointed out that a chargor remains the proprietor of the land, and that the charge is in the nature of a debt.

I think, therefore, that the natural meaning of the Enactment is that the property is to be valued as it stands, and that any charges are allowed for after the value of the estate as a whole has been ascertained. This appears to be the practice in England under the corresponding section—see Hanson's Death Duties, 8th Edition, page 132, where the following passage occurs.

> "the principal value of incumbered property of which the deceased was owner in fee simple will be, not the principal value of the equity of redemption, but the principal value of the property free from incumbrances, the allowance for incumbrances being made afterwards out of the value of the whole estate."

Reliance was placed by the respondent on the case of *Lord Cowley* v. *Commissioners of Inland Revenue*, (1899) A.C. 198. In that case a tenant for life and tenant in tail in remainder executed a disentailing deed, mortgaged the fee, and resettled the equity of redemption. It was held that on the death of the tenant for life the only property that passed under the settlement was the equity of redemption, as the mortgage had priority to the settlement, and the equity of redemption was all that could be settled. The revenue could not enlarge the settled property by adding something which was never part of it. These considerations, however, would not arise when the owner mortgages his property, or, where property having been settled, is mortgaged by the trustees. The solution to every case is reached by ascertaining what property it was that passed.

In my opinion, therefore, the charge in favour of the Planters Loan Board can only be allowed under section 17, and as the deceased's personal liability in respect of this was only 18½ per cent. thereof, this is the only deduction that can be allowed. The above considerations apply even more strongly in the case of the overdraft to the Chartered Bank. There was no registered charge in this case, and the overdraft was in the name of the firm. It was as if the deceased had given his property to secure the overdraft of a third party. The property itself passed on death, and the question of any allowance would only arise if the third party failed to pay the debt for which they were primarily liable, and left the bank to come down on the deceased's estate. In the events that happened the firm paid off the overdraft, and this payment is properly taken into

account in estimating the deceased's share in the firm.

For these reasons I would allow the Collector's appeal on all points, and uphold the assessment of $357,696.69 which has been arrived at after making certain adjustments, upon which the parties are mutually agreed. In the result, on an actual estate of $112,000 the administratrix will have to pay over $25,000 in duty instead of under $7,000, and the duty will in fact work out at over 28 per cent. of the estate, notwithstanding that even under the increased duties prescribed by the amending Enactment of 1931 the maximum duty on an estate of ten million dollars is only 20 per cent.

It is argued that the legislature cannot have intended a result which in the present case is oppressive, and in certain circumstances might lead to the entire confiscation of the deceased's estate. When, however, the intention of an Enactment is plainly expressed, the Courts are not concerned with the results however oppressive. It must be remembered that the second proviso to section 6 does not occur in the English Finance Acts, nor in the corresponding Ordinance of the Colony. It introduces a new principle of taxation. Under the Finance Act a tax was levied not only on the property of the deceased but also on any benefit which accrued to the successor, by virtue of the death, as for instance by the cesser of annuity. But as regards the property that passed, only the actual property was taxable, and *Lord Cowley's* case shows that such property cannot be enlarged by an artificial attempt to include other property which did not pass. In the Federated Malay States, however, by virtue of the peculiar provisions of the second proviso to section 6, the estate of a deceased person is liable to be taxed on property of which he was never the owner at all. There is nothing to prevent the legislature so providing, if it wishes to do so. It would, for instance, be quite competent for the legislature to provide that, in the case of a person dying domiciled in the Federated Malay States, he shall be deemed to have died possessed of personal property outside the Federated Malay States to an amount equal to that of which he died possessed in the Federated Malay States. It would be merely an artificial method of raising more revenue, and the artificial presumption in section 6 has the same effect. This is entirely a matter for the legislature, and it is not for the Courts to speculate whether the results which the express provisions of the Enactment have brought about were not fully visualised.

The appellants must have the costs of the appeal. As regards the costs in the Court below, the Collector did not originally allow the administratrix even to deduct the deceased's share in the Planters Loan Board charge, and this was only conceded in the course of the hearing. I think, therefore, that there should be no costs of the hearing before Thorne, J., and the costs paid by the Collector will have to be repaid. The deposit should be paid out to the appellants.

WHITLEY, J.—This is an appeal from an order of Thorne, Ag. C.J., made upon an application to the Court under section 36 of the Estate Duty Enactment No. 10 of 1929. The material facts are all admitted and are shortly as follows:—Gian Singh died on 10th February, 1931. He was registered as the proprietor of certain lands which have been referred to throughout the proceedings as the Princes Road property and the Trust property. He also died possessed of an interest in a partnership business known as Gian Singh and Company which I will refer to as the firm. The Princes Road property belonged in fact to a syndicate in which the deceased's share was 18½ per cent. In order to raise money for development the deceased had executed a charge over this property in favour of the Planters Loan Board and at the date of his death a large sum was due under this charge. The titles to the Trust property were at the date of death held by the Chartered Bank as security for the overdraft of the firm which amounted to $50,985.37. Since the death of the deceased this overdraft has been paid off by the firm.

The Collector assessed both properties at their full market value making no allowance for the monies due under the charge and on the overdraft. The plaintiff objected that the property which passed on death was only the "value of the landed properties after deducting the amount of the liabilities directly attributable thereto." The learned trial Judge upheld the objection and ordered that in estimating the principal value of the lands there should be deducted therefrom the amounts due under the charge and by way of overdraft.

Section 4 of the Enactment provides that estate duty shall be levied upon the principal value of all property which passes on death. Section 6 enacts that property passing on death shall not be deemed to include property held by the deceased in trust but subject to the important proviso that for the purpose of this Enactment no property passing on death shall be deemed to be held in trust unless the trust is evidenced in the case of immoveable property by registration as trustee and the deposit of the instrument declaring or containing the trust in the office of the Registrar of Titles. Section 4 is the same as section 1 of the Finance Act 1894, and the first part of section 6 is the same as the English section 2 (3) but the proviso is new and peculiar to this country. The effect of this proviso is that where as in the present case a person has failed to comply with its very clear requirements his personal representatives cannot claim the benefit of the exemption and the Collector is entitled to treat the land of which he was registered proprietor as though the deceased was the

beneficial owner even though he was in fact only a trustee.

That being so the short point which has to be determined is whether the amounts due under the charge and on the overdraft should be taken into account when estimating the "principal value" of these properties under sections 1 and 14 or whether as the Collector contends those amounts should be regarded as debts due by the deceased at the time of his death and allowed for under section 17 (1).

Section 14 provides that:—

> "The principal value of any property shall be estimated to be the price which in the opinion of the Collector such property would fetch if sold in the open market at the time of the death of the deceased."

Section 17 (1) reads:—

> "In determining the value of an estate for the purpose of estate duty allowance shall be made for reasonable funeral expenses not to exceed one thousand dollars or two and a half per centum of the ascertained value of the estate whichever is the smaller and for debts due by the deceased at the time of his death, but an allowance shall not be made
>
> (*a*) for debts incurred by the deceased, unless such debts were incurred *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, or
>
> (*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained."

In most cases it would make no difference whether these amounts were taken into account under section 14 or under section 17 but in the present case it is vital from the plaintiff's point of view that they should be allowed for under section 14 inasmuch as, the debts not having been incurred wholly for the deceased's own use and benefit but for the benefit of the syndicate and firm respectively, they cannot be allowed for under section 17.

As Vice-Chancellor Kindersley observed in his judgment in the case of *Willcocks* v. *Smith*, (1857) 4 Drew 40; 62 E.R. 16. "Now it is unquestionably a principle established in reference to Acts of Parliament of this kind imposing duties, that they must be construed strictly, if the Act is ambiguous, the subject is entitled to the benefit of the doubt; but the principle is, not that the subject is to have that benefit, if upon any argument that the ingenuity of counsel can suggest, the Act does not appear perfectly accurate; but that if, after careful examination of all the clauses, a judicial mind shall entertain any reasonable doubt as to what the Legislature intended, then the subject shall have the benefit of the doubt."

It is clear then that if there is any doubt as to whether these deductions should be made in estimating the principal value of the property the plaintiff must be given the benefit of that doubt but in my opinion the law is clear and open to no doubt whatsoever.

Apart from the proviso to section 6 already referred to and slight variations in wording which do not affect the principles sections 4, 5, 6, 14 and 17 of our Enactment are substantially the same as sections 1, 2, 7 (5), and 7 (1) of the Act 1894, and accordingly the English cases on those sections may be usefully referred to when construing the Enactment. It is to be noted that under section 1 of the Finance Act estate duty is payable on the value of the property which passes or is deemed to pass on death, not on the value of an estate or interest in the property which so passes or is deemed to pass—*Attorney General* v. *Dodington*, (1897) 1 Q.B. 722, at page 734, and on appeal, (1897) 2 Q.B. 373, at pages 382, 383; *Cowley* v. *Inland Revenue Commissioners*, (1899) A.C. 198, at page 212; *Inland Revenue Commissioners* v. *Priestly*, (1901) A.C. 205, at page 214.

Under the laws of the Federated Malay States there can only be one estate in land and that is the estate of the registered proprietor. Under the system of charges established by the Land Code there are no such things as legal or equitable estates or equities of redemption. The chargee gets no estate in the land. What the charge creates is a "debt" charged upon the land and the property remains in the chargor.

On the particular facts in the *Cowley* case it was held that all that passed on the death of the tenant for life was the equity of redemption. There a tenant for life and a tenant in remainder had executed a disentailing deed, mortgaged the fee simple and resettled the equity of redemption, the learned trial Judge apparently felt that the decision in that case supported his view that the property which passes on the death of a chargor to his legal personal representative is the nett value of the land after deducting from the gross value the amount due on the charge.

With respect I think that the facts of that case were so different that it is unsafe to take it as a guide in the present case.

In Hanson's Death Duties 8th Edition, page 132, the learned author summarises the law very clearly in the following words:—

> "By section 1 of the Act the duty is to be paid 'upon the principal value ascertained as hereinafter provided of all property,' etc.: and by section 7 (1) the allowance of debts and incumbrances is to be made 'on determining the value of an estate for the purpose of estate duty'; and the 'principal value,' therefore, of incumbered property of which the deceased was owner in fee simple will be, not the principal value of the equity of redemption, but the principal value of the property free from incumbrances the allowance for incumbrances being made afterwards out of the

value of the whole estate, though in respect of particular subjects of property."

He cites no authority for that proposition but it seems to follow so inevitably from the clear wording of the sections that I cannot see that any authority is needed.

The same passage occurred in the 6th Edition and one would expect that if it were not an accurate statement of the law it would have been corrected and that there would be cases deciding otherwise. Accordingly it may I think be taken as well established that in England allowance for incumbrances in the case of a mortgaged estate is made under section 7 (1) out of the value of the whole estate and not when estimating the principal value of the particular piece of property.

Is there any reason why the position should be different here? I can see none. The draughtsman of our Enactment clearly had the English Act before him and he followed the English sections 1 and 7 (1) with only one material alteration. The English section reads "Allowance shall be made for debts and incumbrances" whereas our section 17 (1) reads "Allowance shall be made for debts."

The words "and incumbrances" are omitted. The reason seems clear. The word "incumbrance" is not used in the Land Code or elsewhere in the Estate Duty Enactment and it is nowhere defined. In England it is the appropriate word to use in connection with a mortgage but here the appropriate word to use in connection with a charge is "debt." That is the word used throughout the Land Code, and section 2 of the Estate Duty Enactment refers to "debts secured on immoveable property." If it had been intended deliberately to make our law different from the English law in this respect one would have expected to find some reference to allowance for incumbrances introduced in our section 14 which reads:—

> "The principal value of any property shall be estimated to be the price which in the opinion of the Collector such property would fetch if sold in the open market at the time of the death of the deceased."

It is clear I think that the word was omitted in section 17 (1) because "debt" here covers what would be incumbrances in England and accordingly the word would be superfluous. It would follow that the time for considering such debts secured upon land is the same here as in England and that is when determining the value of an estate under section 17 (1) and not when estimating the principal value under sections 4 (1) and 14. That appears to be the law and it also appears to be reasonable inasmuch as many cases must arise in which land owing to depreciation becomes worth less than the amount of the charge. It would not be possible to allow for the full amount of a debt in such a case unless the principal value were held to be a minus figure whereas full allowance would presumably be made as a debt under section 17 (1).

To sum up the law seems to me clear and it is not for the Court to strain it merely because hardship may be inflicted in any particular case by applying it. The Legislature must have had good reasons for introducing this somewhat drastic proviso which is doubtless designed to prevent evasion of taxation by unprincipled persons. The section confers certain benefits upon the subject and the proviso says that he cannot reap the advantage of those benefits unless he complies with certain requirements. If he fails to do so he takes a risk and in the present case the risk has materialised.

I would allow the appeal with costs. As to costs below the plaintiff succeeded to some extent by obtaining the concession as regards 18½ per cent. of the charge debt on the Princes Road property and I think each party should pay his own costs in the Court below. The deposit should be paid out to the Appellant's Solicitors on account of costs.

GERAHTY, J.—This is an appeal under section 36 of the Estate Duty Enactment 1929, against an order of Thorne, Ag. C.J., by which he revised the decision of the Collector of Estate Duty with respect to assessment of estate duty in the estate of one Gian Singh, deceased.

For the purposes of this appeal the relevant facts are briefly as follows:—

The deceased at the date of his death (10th February, 1931) was the registered proprietor of two lots of property hereinafter referred to as

(1) The Princes Road property and
(2) The Trust property.

The deceased also died possessed of an interest in the partnership business carried on under the firm name of Gian Singh and Company.

The Princes Road property belonged to a syndicate or partnership in which the deceased held a share to the extent of 18½ per cent.

The Trust property belonged to a trust known as "the Pram Singh, Methai Singh and Arjan Singh Trust," one of the beneficiaries being the deceased. The proprietors of the Trust property and of the business of Gian Singh & Co., are identical.

With regard to the Princes Road property, the deceased on 1st June, 1929, executed a charge over this property in favour of the Planters Loan Board to secure repayment of the sum of $125,000. The moneys borrowed under this charge were utilised in the development of the Princes Road property.

With regard to the Trust property, at the date of the death of the deceased the titles to this property were held by the Chartered Bank of India, Australasia and China, as security for an overdraft of the business of Gian Singh & Co. Since the death of the deceased this overdraft

has been paid off out of the funds of Gian Singh and Co.

The question is whether these lands are chargeable with estate duty at their gross value or at their nett value.

The learned trial Judge held in regard to the Princes Road property that a deduction must be made from the gross value of the Princes Road property of the sum remaining due to the Planters Loan Board upon the charge at the date of the death of the deceased and also in regard to the Trust property that the value of the interest of the deceased therein must be reduced by the amount due to the Chartered Bank.

It is contended for the appellants that the property passing on the death of the deceased was the registered interest of the deceased in the lands in question and that the amount of the charge and of the overdraft were debts the deduction of which fell to be determined within section 17 of the Estate Duty Enactment.

By section 4 of the Estate Duty Enactment. 1929, as amended estate duty is leviable as follows:—

> 4 (1). "In the case of every person dying after the last day of December, 1931, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value, ascertained as hereinafter provided, of all property which passes on the death of such person a duty called 'Estate duty' at the graduated rates set forth in the second schedule to this Enactment."

Section 5 deals with property which is deemed to pass on death and section 6 makes provision for exceptions from property passing or deemed to pass on death and excludes property held by the deceased "as trustee for another person under a disposition not made by the deceased."

The second proviso, however, enacts that:—

> "For the purposes of this Enactment no property passing on the death of deceased shall be deemed to be held by the deceased in trust for another person under any disposition unless the trust is evidenced in the case of immoveable property by registration as trustee and the deposit of the instrument declaring or containing the trust in the office of the Registrar of Titles or Collector of Land Revenue."

Applying the provisions of this proviso to the present case it is clear that the trust not being evidenced in accordance with the requirements of the proviso the deceased is to be treated as having been the true owner for the purpose of the Enactment. The question now to be determined is what is the property which passes on the death of the deceased? It is contended by Mr. Shearn for the respondent that the deceased had only a qualified property in the lands in question, that an interest has been carved out, and that only a residual interest passed on death.

Reference has been made to English authorities and among others *Cowley* v. *The Commissioners of Inland Revenue,* (1899) A.C. 198, and *Nevill* v. *Inland Revenue Commissioners,* (1924) A.C. 385, have been cited and discussed at some length.

It seems to me, however, that the solution in this case is to be found in the Land Code, 1926. It is, in my opinion, abundantly clear from the provisions of Part X of the Land Code relating to charges, the definition of "Chargor" in section 2 and the provisions of section 54, that a chargor is and remains the registered proprietor of charged lands and that the right to the land remains with the registered owner. See judgment of Lord Dunedin in the case of *Abdul Rahman* v. *Mohamed Hassan* reported in 1 F.M.S. L.R. at page 298.

I am of opinion therefore that in regard to the Princes Road property that the properties charged to the Planters Loan Board passed on the death of the deceased. In regard to the Trust property the position seems to me to be even stronger for all that the Chartered Bank had over these properties was something in the nature of lien which had not been perfected under section 134 of the Land Code. Accordingly I am of opinion that the properties, the titles for which had been deposited with the Chartered Bank, passed on the death of the deceased. Section 4 of the Estate Duty Enactment provides that duty shall be leviable upon "the principal value, ascertained as hereinafter provided, of all property which passes."

Section 14 provides that:—

> "The principal value of any property shall be estimated to be the price which in the opinion of the Collector such property would fetch if sold in the open market at the time of the death of the deceased."

How then is the principal value of the property in this case to be estimated?

In my opinion the principal value is to be estimated on the market value of the land at the time of death. In Hanson's Death Duties, 8th Edition, at page 132, the law on this point is propounded as follows:—

> "the 'principal value' therefore of incumbered property of which the deceased was owner in fee simple will be, not the principal value of the equity of redemption, but the principal value of the property free from incumbrances, the allowance for incumbrances being made afterwards out of the value of the whole estate."

No cases are cited in support of this statement, but I see no reason to doubt its correctness in law.

There remains the question of what allowance, if any, should be made in respect of the charge and overdraft under section 17 of the Enactment.

Section 17 provides that an allowance shall be made for reasonable funeral expenses within

certain limits and for debts due by the deceased at the time of his death, but that an allowance shall not be paid—

(*a*) "for debts incurred by the deceased, unless such debts were incurred *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit, or

(*b*) "for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained.

It is in my opinion clear from the provisions of this section that no allowance can be made in this case for such part of either the debt due on the charge or to the bank which was not incurred wholly for the deceased's own benefit. I am of opinion, however, that the provisions of the second proviso to section 6 do not preclude the Collector from enquiring into and ascertaining what debts were in fact due by the deceased at the time of his death, and I am of opinion that the Collector was correct in making an allowance to that extent in his assessment. A point has been raised by Mr. Shearn upon the omission of the words "and incumbrances," which appear in the equivalent section of the Finance Act, 1894, Section 7 (i), from section 17 (i) of the local Enactment. It appears to me that the reason for this is that the term "incumbrances" is not employed in the Land Code and that the Legislature in confining the scope of the section to funeral expenses and debts thereby intended the inclusion of charges in the word "debts." I am fortified in this view by the definition of "property" in section 2 (xi) of the Estate Duty Enactment which refers to debts secured on moveable or immoveable property. I am unable to accept the contention that from the omission of the words "and incumbrances" in section 17 (i) the inference should be drawn that sums due on charges should reduced from the principal value of the property passing and are not debts of which an allowance should be made under section 17.

For all these reasons I would allow this appeal and uphold the assessment of $357,696.69. The appellants should, in my opinion, have the costs of this appeal but not the costs of the hearing before Thorne, Ag. C.J., thus the costs paid by the Collector should be repaid and the deposit should be paid out to the appellants.

Appeal allowed.

Solicitors for Plaintiff–Respondent—

Pooley & Co.

Solicitors for Defendants-Appellants—

Lovelace & Hastings.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J.

April 13, 1933.

THE MOTOR EMPORIUM .....Appellant.

vs.

V. ARUMUGAM.....Respondent.

[SELANGOR MAGISTRATE'S CIVIL APPEAL No. 13 of 1933]

Attachment of property in custody of a public officer—Government contract—Assignment of benefit of contract to third party—Civil Procedure Code, 1918, sections 265, 273—Application of equitable principles—Courts Enactment, 1918, section 49 (i).

An execution creditor can only attach an interest in property to which, at the time of the attachment, the debtor was beneficially entitled.

By a letter in writing dated the 17th September, 1932, and stamped as an assignment, a judgment-debtor, (a contractor), assigned his rights to the respondent to draw $390/- from the Public Works Department, Klang. Meanwhile the appellant obtained judgment against the judgment-debtor and, in pursuance of that judgment, served a prohibitory order, obtained under section 273 of the Civil Procedure Code, on the Senior Executive Engineer, Klang on the 26th October, 1932, in respect of the $390/-.

Held, that when the judgment-debtor executed the assignment of the 17th September 1932, purporting to transfer his interest in the $390/- to the respondent, he had, in fact, transferred such interest and accordingly nothing remained for the appellant to attach.

Although there is no Civil Law Enactment incorporating into the law of the Federated Malay States the equitable principles applied in England, yet under the provisions of section 49 (i) of the Courts Enactment, the Supreme Court has the widest possible jurisdiction in all suits matters and questions of a civil nature, and has inherent jurisdiction to apply such principles of natural justice as are necessary or desirable.

R. Ramani for the appellant.

A. J. Bostock Hill for the respondent.

Cur. Ad. Vult.

TERRELL, AG. C.J.—In this case, Kanagasabhai the second defendant entered into a contract with the Public Works Department to supply certain granite blocks in connection with the work being carried out upon the Mosque at Klang. The contract is not disputed, and is evidenced by an indent (exhibit B) dated the 15th September, 1932. The amount payable to the second defendant on supplying the granite was $390/–.

By a letter in writing dated 17th September, 1932 (exhibit A) and stamped as an assignment, the second defendant, in consideration of $150/–, assigned to the plaintiff his right under the indent, and authorised him to draw the $390/– from the office of the Public Works Department, Klang.

Meanwhile, on some date which is not specified in the pleadings, the Motor Emporium, the first defendants, obtained a judgment against the second defendant in Telok Datoh Civil Suit 70/32 for $149.99. This judgment was confirmed on